

## THEFT & PROPERTY CRIMES CHART

Prepared by the clerks of the Los Angeles Immigration Court.

Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<p><b>Cal. Penal Code § 32 (Accessory to a Felony)</b> Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony.</p>				
<b>Aggravated Felony:</b> <b>Obstruction of Justice</b> 237(a)(2)(A)(iii)/ 101(a)(43)(S)  <b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)	Except where otherwise prescribed, 1 year in county jail or imprisonment in state prison (3 years max).	<b>YES</b> <b>Categorical Match?</b> Yes  <i>Matter of Valenzuela Gallardo</i> , 27 I&N Dec. 449 (BIA 2018) (“[T]he respondent’s offense of accessory to a felony under section 32 of the California Penal Code is clearly an offense relating to obstruction of justice under [section 101(a)(43)(S)].”).	<b>Categorical Match?</b> No, overbroad, proceed to divisibility analysis.  The Ninth Circuit held that CPC § 32 “refers to a potential set of crimes broader than the generic definition of a ‘crime involving moral turpitude.’” <i>Navarro-Lopez v. Gonzales</i> , 503 F.3d 1063, 1073 (9th Cir. 2007) (en banc) (explaining that if the principal offense is not a CIMT then CPC § 32 covers conduct that does not constitute a CIMT), <i>overruled on other grounds by United States v. Aguila-Montes de Oca</i> , 655 F.3d 915 (9th Cir. 2011).  <i>See also Matter of Rivens</i> , 25 I&N Dec. 623, 628 (BIA 2011) (reasoning, without holding, that “in our view, <i>Navarro-Lopez</i> is reasonably read only as finding that the California accessory after the fact conviction in that case was not for a crime involving moral turpitude because the underlying offense was itself not a crime involving moral turpitude”).  <b>Divisible?</b> No case directly on point analyzing the divisibility of CPC § 32	

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Cal. Penal Code § 211 (Robbery): Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.				
<b>Aggravated Felony: Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)	First degree robbery as defined in § 213(a)(1)(A): state prison (max 9 years)	<b>Crime of Violence under 18 U.S.C. §16(a): NO</b>  <b>Categorical Match? No</b> <b>Divisible? No</b>  <i>See United States v. Garcia-Lopez</i> , No. 15-50366, 2018 WL 4262459, at *5 (9th Cir. Sept. 7, 2018) (“[O]ur recent decisions . . . firmly establish that [section 211] California robbery is not a ‘crime of violence’ under § 16(a) . . .”) (relying on <i>United States v. Dixon</i> , 805 F.3d 1193, 1997 (9th Cir. 2015)) (concluding that CPC § 211 is not a violent felony robbery offense under the ACCA <sup>1</sup> )).	<b>YES</b>  <b>Categorical Match? Yes.</b> Robbery is <u>categorically</u> a CIMT. <i>Mendoza v. Holder</i> , 623 F.3d 1299 (9th Cir. 2010); <i>Matter of Kim</i> , 17 I&N Dec. 144 (BIA 1979) (disapproved on other grounds).  The Ninth Circuit agreed with the BIA’s reasoning and other circuits that theft crimes are CIMTs. <i>Esparza-Ponce</i> , 193 F.3d at 1136. And held it to be a lesser included offense in robbery. <i>Mendoza v. Holder</i> , 623 F.3d 1299, 1303-04 (9th Cir. 2010). Therefore holding robbery to be a CIMT. <i>See id.</i> ; <i>Matter of V-T-</i> , 2 I. & N. Dec. 213, 214 (BIA 1944) (“This offense [grand theft] is manifestly one involving moral turpitude.”).  “Theft and robbery have the same felonious taking element, which is the intent to steal, or to feloniously deprive the owner permanently of his or her property.” <i>People v. Bacon</i> , 50 Cal. 4th 1082, 1117 (2010).	<b>Theft Offense: YES</b> <b>Categorical Match? Yes.</b> Robbery by force or fear is categorically an aggravated felony theft offense. <i>Matter of Delgado</i> , 27 I&N Dec. 100 (BIA 2017); <i>Matter of Ibarra</i> , 26 I&N Dec. 809 (BIA 2016); <i>United States v. Guzman-Ibarez</i> , 792 F.3d 1094, 1099 (9th Cir. 2015). A CPC § 211 offense is completed when the taking, including asportation, is accomplished and necessarily contains all elements of a generic theft offense. A convicted aider and abettor must have had knowledge of the perpetrator’s purpose and
<b>Aggravated Felony: Theft Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(G)	First degree robbery as defined in § 213(a)(1)(B): state prison (max 6 years)			
<b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)	Second degree robbery as defined in § 213(a)(2): state prison (max 5 years)			

<sup>1</sup>(b) (5)

<sup>2</sup> Because the sentencing U.S.S.G case law refers to a different federal definition of a crime of violence, the holding in *United States v. Bankston*, No. 16-10124, \_\_\_\_ F.3d \_\_\_\_, 2018 WL 4016853, at \*3 (9th Cir. Aug. 23, 2018) (analyzing whether CPC § 211 is a crime of violence under certain amendments of the U.S.S.G.) does not apply for immigration purposes).

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	<p>defining a crime of violence that is only partly similar to the 18 U.S.C. § 16 definition” (citation and internal quotation marks omitted)); <i>see also Valencia v. Gonzales</i>, 439 F.3d 1046, 1053 (9th Cir. 2006) (“[T]he Commentary to section 2L1.2 of the Guidelines lists statutory rape as per se a crime of violence . . . Congress has provided no similar indications of an intent to make statutory rape an aggravated felony under the crime of violence definition in INA § 101(a)(43)(F).”).</p> <p><b>Crime of Violence under 18 U.S.C. § 16(b): NO</b></p> <p><i>Sessions v. Dimaya</i>, No. 15-1498, ---S.Ct --- (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).</p>	<p>specific intent and purpose of facilitating the entire offense. <i>Pena-Rojas v. Sessions</i>, No. 17-70274, 2018 WL 2425429, at *1 (9th Cir. May 30, 2018) (“California robbery conviction under California Penal Code § 211 is categorically an aggravated felony theft offense under [INA § 101(a)(43)(G).”).</p> <p><i>Cf. United States v. Bernal-Sanchez</i>, 2016 WL 727070, at *7 (S.D. Cal. Feb. 24, 2016) (concluding that defendant was not removable under a theft offense aggravated felony—INA § 101(a)(43)(G)—because CPC § 211 is not “a categorical theft offense”); <i>but see United States v. Avalos-Rivera</i>, 2018 WL 934626, at *2 (S.D. Cal. Feb. 16, 2018) (declining to follow <i>Bernal-Sanchez</i>, instead following <i>United States v. Guzman-Ibarez</i>, <i>supra</i>, 792 at 1094.</p>
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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 215 (Carjacking):</b> “Carjacking” is the felonious taking of a motor vehicle in the possession of another, from his or her person or immediate presence, or from the person or immediate presence of a passenger of the motor vehicle, against his or her will and with the intent to either permanently or temporarily deprive the person in possession of the motor vehicle of his or her possession, accomplished by means of force or fear.				
<b>Aggravated Felony: Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)	State prison (max 9 years).	<b>Crime of Violence under 18 U.S.C. §16(a): NO</b>  <b>Categorical match? NO</b>  “California carjacking [CPC § 215] is <b>not a crime of violence</b> under 8 U.S.C. § 1101(a)(43)(F), and our holding to the contrary in <i>Nieves-Medrano</i> is no longer good law after <i>Johnson</i> .” <i>Solorio-Ruiz v. Sessions</i> , 881 F.3d 733, 738 (9th Cir. 2018)	<b>LIKELY YES</b>  <b>Categorical match? (b) (5)</b>	<b>Theft Offense:</b> (b) (5)
<b>Aggravated Felony: Theft Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(G)				
<b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)		In light of the Supreme Court’s decision in <i>Johnson v. United States</i> , 559 U.S. 133, 140 (2010)—holding that the physical force required of a crime of violence must be “violent force” capable of causing physical pain or injury—the 9th Circuit overruled <i>Nieves-Medrano v. Holder</i> , 590 F.3d 1057, 1058 (9th Cir. 2010), which previously concluded that CPC § 215(a) is categorically a crime of violence. See <i>Solorio-Ruiz</i> , 881 F.3d 733. Employing the categorical approach, the panel concluded that a carjacking conviction under CPC § 215(a) only requires force in excess of that required to seize the vehicle, however slight it may be. <i>People v. Hudson</i> , 217 Cal. Rptr. 3d 775, 782 (Ct. App. 2017). Thus, carjacking under CPC § 215(a) is not a crime of violence under INA § 101(a)(43)(F).  <b>Divisible?</b> <i>Solorio-Ruiz</i> found that CPC § 215 is not a crime of		

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violence without proceeding to any analysis regarding divisibility

### Crime of Violence under 18 U.S.C. § 16(b): NO

*Sessions v. Dimaya*, No. 15-1498, ---S.Ct --- (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).

### Theft Offense:

(b) (5) [REDACTED]

[REDACTED]

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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 459 Residential (First Degree) Burglary:</b> “Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, . . . floating home . . . , railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach . . . any house car . . . inhabited camper . . . vehicle as defined by the Vehicle Code, when the doors are locked, aircraft . . . or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary. As used in this chapter, “inhabited” means currently being used for dwelling purposes, whether occupied or not. A house, trailer, vessel designed for habitation, or portion of a building is currently being used for dwelling purposes if, at the time of the burglary, it was not occupied solely because a natural or other disaster caused the occupants to leave the premises.”				
<b>Cal. Penal Code § 460(a):</b> “Every burglary of an inhabited dwelling house, vessel, as defined in the Harbors and Navigation Code, which is inhabited and designed for habitation, floating home, as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, or trailer coach, as defined by the Vehicle Code, or the inhabited portion of any other building, is burglary of the first degree.”				
<b>Aggravated Felony: Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)	State prison (max 6 years).	<b>Crime of Violence under 18 U.S.C. § 16(a):</b> (b) (5) [REDACTED]	<b>NO for residential burglary.</b> Categorical match? No Divisible? No (cannot proceed to modcat) Because burglary is indivisible under <i>Rendon</i> , and the California statute does not require an unlawful entry, it is not a CIMT. <i>See Rendon v. Holder</i> , 764 F.3d 1077, 1090 (9th Cir. 2014); <i>Descamps</i> , 133 S. Ct. 2276, 2293 (2013) (“[G]eneric unlawful entry is not an element, or an alternative element, of § 459”).	<b>Theft Offense: NO</b> <b>Categorical match? NO</b> <b>Divisible? NO</b> The burglary statute is indivisible and broader than the generic theft offense. It cannot qualify as an attempted theft, or theft, offense. <i>Rendon v. Holder</i> , 764 F.3d 1077, 1090 (9th Cir. 2014). “California law overwhelmingly dictates the conclusion that the jury in a case concerning an alleged violation of § 459 need not be unanimous regarding whether the defendant intended to commit a theft offense or any other felony.” <i>Id.</i>
<b>Aggravated Felony: Theft/Burglary Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(G)		[REDACTED]		
<b>Aggravated Felony: Attempted Theft Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(U)		[REDACTED]		
<b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)		<b>Crime of Violence under 18 U.S.C. § 16(b): NO</b>  <i>Sessions v. Dimaya</i> , No. 15-1498, ---S.Ct --- (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony).  <b>Burglary Offense: NO</b> Residential burglary is not a “burglary offense,” for purposes of INA §	(b) (5)  [REDACTED]	<b>Particularly Serious Crime: (b) (5)</b> [REDACTED]

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	101(a)(43)(G) because it does not require unlawful entry, i.e., breaking and entering, one of the elements of “generic burglary.” <i>Descamps v. U.S.</i> , 133 S. Ct. 2276, 2285-86 (2013).	(b) (5) [REDACTED]	(b) (5) [REDACTED]

Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 459 Commercial or Vehicular (Second Degree) Burglary</b>				
“Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, . . . floating home . . . railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach . . . any house car . . . inhabited camper . . . vehicle as defined by the Vehicle Code, when the doors are locked, aircraft . . . or mine or any underground portion thereof, with intent to commit grand or petit larceny or any felony is guilty of burglary.”				
<b>Cal. Penal Code § 460(b):</b> All other kinds of burglary are of the second degree.				
<b>Aggravated Felony: Crime of Violence</b> 237(a)(2)(A)(iii)/ 101(a)(43)(F)	County jail for not more than 1 year or state prison (max 3 years).	Crime of (b) (5) [REDACTED]	<b>NO Categorical Match?</b> No. Under the categorical approach, commercial burglary of a building open to the public at large is not a CIMT, even if accompanied by the intent to commit theft or larceny, because the elements do not match the elements of any generic CIMT, qualify as fraudulent conduct, or otherwise constitute acts that are <i>per se</i> morally reprehensible. <i>Hernandez-Cruz v. Holder</i> , 651 F.3d	<b>Theft Offense:</b> <b>NO Categorical Match?</b> No. CPC § 459 is categorically not a match to the federal definition of theft, or attempted theft because the mens rea portion is broader than the federal definition of theft.  <b>Divisible?</b> No. CPC § 459 sets forth alternative means to meet the mens rea requirement, namely whether the defendant intended to commit theft or a different felony, rather than alternative elements. <i>Rendon v. Holder</i> , 764 F.3d
<b>Aggravated Felony: Theft/Burglary Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(G)				
<b>Aggravated Felony: Attempted Theft Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(U)				
<b>CIMT</b> 212(a)(2)(A)(i)(I)		Crime of Violence under 18 U.S.C. § 16(b): NO		

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237(a)(2)(A)(i)	<p><i>Sessions v. Dimaya</i>, No. 15-1498, ---S.Ct --- (2018) (holding that 18 U.S.C. § 16(b), as incorporated in INA § 101(a)(43)(F), is unconstitutionally vague, and thus, can no longer serve as the definition of the crime of violence aggravated felony)</p> <p><b>Burglary Offense: NO</b></p> <p><b>Vehicular burglary is never</b> a burglary offense because it lacks the element of a structure or building for generic burglary. <i>Ye v. INS</i>, 214 F.3d 1128, 1133 (9th Cir. 2000).</p> <p><b>Commercial burglary is not</b> a burglary offense, because it does not require unlawful entry, i.e., breaking and entering, one of the elements of “generic burglary.” <i>Descamps v. U.S.</i>, 133 S. Ct. 2276, 2285-86 (2013).</p>	<p>1094, 1109 (9th Cir. 2011).</p> <p><b>Divisible?</b> No. Burglary is indivisible; therefore the modified categorical approach cannot be used. <i>Rendon v. Holder</i>, 764 F.3d 1077, 1090 (9th Cir. 2014).</p>	1077, 1090 (9th Cir. 2014).
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<b>Cal. Penal Code § 484, Theft</b>				
§ 484(a): Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, is guilty of theft. In determining the value of the property obtained, for the purposes of this section, the reasonable and fair market value shall be the test, and in determining the value of services received the contract price shall be the test. If there be no contract price, the reasonable and going wage for the service rendered shall govern. For the purposes of this section, any false or fraudulent representation or pretense made shall be treated as continuing, so as to cover any money, property or service received as a result thereof, and the complaint, information or indictment may charge that the crime was committed on any date during the particular period in question. The hiring of any additional employee or employees without advising each of them of every labor claim due and unpaid and every judgment that the employer has been unable to meet shall be prima facie evidence of intent to defraud.				

**Cal. Penal Code § 488, Petty Theft:** Theft in other cases [other than those set forth in section 487] is petty theft.

<b>Aggravated Felony: Theft Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(G)	County jail for not more than 6 months.	<b>NO</b>  <b>Section § 484: NO</b> <b>Categorical Match? No.</b> <b>Indivisible? No, overbroad.</b>  “California’s theft statute is both overbroad and indivisible . . . and a conviction under it can <u>never</u> be a ‘theft offense’ as defined in 8 U.S.C. § 1101(a)(43)(G).” <i>Lopez-Valencia v. Lynch</i> , 798 F.3d 863, 871 (9th Cir. 2015). <sup>3</sup>  Petty theft does not carry the requisite term of imprisonment for an aggravated felony.	<b>YES</b>  <b>Categorical Match? Yes</b> The Ninth Circuit has consistently held that theft, petty and grand, is a CIMT. <sup>4</sup> <i>Castillo-Cruz v. Holder</i> , 581 F.3d 1154, 1160 (9th Cir. 2009) (per curiam); <i>Flores Juarez v. Mukasey</i> , 530 F.3d 1020 (9th Cir. 2008); <i>U.S. v. Esparza-Ponce</i> , 193 F.3d 1133, 1136-37 (9th Cir. 1999); <i>see also People v. Avery</i> , 27 Cal.4th 49, 55-57 (Cal. 2002) (stating that theft under the CPC requires the intent to permanently deprive even though the statute does not so state).  “Under Californian law, a conviction for grand theft or petty theft under Cal. Penal Code § 484 requires, in common with other crimes of moral turpitude, ‘the specific intent to deprive the victim of his property permanently.’” <i>Castillo-Cruz</i> , 581 F.3d at 1160.	
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<sup>3</sup>(b) (5)

<sup>4</sup> While the Ninth Circuit has not explicitly held that § 484 is *categorically* a CIMT in a published decision, Ninth Circuit unpublished decisions and published Board decisions have been able to make that leap from the above referenced cases. *See Ramirez v. Holder*, 599 Fed. App’x 729, 729 (9th Cir. 2015) (unpublished); *Gutierrez v. Holder*, 505 Fed. App’x 622, 622 (9th Cir. 2013) (unpublished); *Matter of Guillermo Diaz-Lizarraga*, 26 I&N Dec. 847, 853 n. 9 (BIA 2016).

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<b>Cal. Penal Code § 484/666 Recidivist Petty Theft (Petty Theft with Priors)</b> CPC § 666 elevates a petty theft charge from a misdemeanor to a felony due to prior petty theft convictions. § 666 is a sentencing provision. Therefore to assess whether the crime is an aggravated felony or CIMT, the underlying petty theft charge must be assessed, CPC § 484(a) (above).			
<b>Aggravated Felony: Theft Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(G)	County jail not exceeding 1 year or state prison (max 3 years).	<p><b>Requisite Term of Imprisonment:</b> Although § 666 is a recidivist enhancement, it does relate to the commission of the repeat offense and is “clearly part of the sentence ‘prescribed by law.’” <i>See United States v. Rodriguez</i>, 553 U.S. 377, 382-86 (2008).</p> <p><b>Section § 484: NO</b> <b>Categorical Match?</b> No, overbroad <b>Divisible?</b> No “California’s theft statute is both overbroad and indivisible . . . and a conviction under it can never be a ‘theft offense’ as defined in 8 U.S.C. § 1101(a)(43)(G).” <i>Lopez-Valencia v. Lynch</i>, 798 F.3d 863, 871 (9th Cir. 2015).</p>	<b>YES</b> <b>Categorical Match?</b> Yes. Petty theft with priors under § 666 is <u>categorically</u> a CIMT. <i>See Petty Theft</i> above.

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<b>Cal. Penal Code § 487 Grand Theft</b> Grand theft is theft committed in any of the following cases: (a) When the money, labor, or real or personal property taken is of a value exceeding nine hundred fifty dollars (\$950), except as provided in subdivision (b). (b) Notwithstanding subdivision (a), grand theft is committed in any of the following cases: (1)(A) When domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops are taken of a value exceeding two hundred fifty dollars (\$250). (B) For the purposes of establishing that the value of domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops under this paragraph exceeds two hundred fifty dollars (\$250), that value may be shown by the presentation of credible evidence which establishes that on the day of the theft domestic fowls, avocados, olives, citrus or deciduous fruits, other fruits, vegetables, nuts, artichokes, or other farm crops of the same variety and weight exceeded two hundred fifty dollars (\$250) in wholesale value. (2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or other aquacultural products are taken from a commercial or research operation which is producing that product, of a value exceeding two hundred fifty dollars (\$250). (3) Where the money, labor, or real or personal property is taken by a servant, agent, or employee from his or her principal or employer and aggregates nine hundred fifty dollars (\$950) or more in any 12 consecutive month period. (c) When the property is taken from the person of another. (d) When the property taken is any of the following: (1) An automobile. (2) A firearm				
<b>Aggravated Felony: Theft Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(G)	Grand theft with the use of a firearm: state prison (max 3 years)	<b>NO</b>  See reasoning above on theft.	<b>YES</b> <b>Categorical Match?</b> Yes  Grand theft under § 487 is <u>categorically</u> a CIMT. See Petty Theft above.	
<b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)	Other grand theft: County jail not exceeding 1 year or state prison (max 3 years).	“Our use of the terms ‘theft conviction’ or ‘theft statute’ refer to any offense for which the substantive, underlying offense charged is a violation of Penal Code Section 484.” <i>Lopez-Valencia v. Lynch</i> , 798 F.3d 863, 866 n.1 (9th Cir. 2015).		

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**Note:** This chart does not analyze what effect the petty offense exception may have on a conviction that is determined to be a CIMT nor whether the offense meets any minimum sentence requirement.

## THEFT & PROPERTY CRIMES CHART

Prepared by the clerks of the Los Angeles Immigration Court.

Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 496(a), Receipt of Stolen Property</b>				
			<p>496(a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a county jail for not more than one year, or imprisonment pursuant to subdivision (h) of Section 1170. However, if the value of the property does not exceed nine hundred fifty dollars (\$950), the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year, if such person has no prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.</p> <p>A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.</p>	
<b>Aggravated Felony: Theft Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(G)	(a) County jail (max 1 year)	<b>YES</b> <b>Categorical Match?</b> Yes	<b>NO</b> <b>Categorical match?</b> No, overbroad.	
<b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)	(b) County jail (max 1 year) or state prison (no max designated)  (d) county jail (max 1 year) or state prison (max 3 years)	<p>A violation of § 496(a) is <u>categorically</u> an aggravated felony theft (including receipt of stolen property) offense.</p> <p><i>US v. Flores</i>, --- F.3d ---, No. 16-50096 (Aug. 28, 2018) (finding that a § 496(a) matches the generic definition of receipt of stolen property and therefore is a “theft” aggravated felony, even though California’s theft statute is not a categorical match to a theft aggravated felony); <i>Matter of Enrique Alday-Dominguez</i>, 27 I&amp;N Dec. 48 (BIA 2017); <i>see also Verdugo-Gonzalez v. Holder</i>, 581 F.3d 1059, 1061-62 (9th Cir. 2009) (addressing § 496(a)); <i>Alvarez-Reynaga v. Holder</i>, 596 F.3d 534, 537 (9th Cir. 2010) (addressing § 496d(a));</p> <p>If the respondent was sentenced to a year or more, the conviction is an aggravated felony.</p>	<p>§ 496(a) falls outside the generic definition of a crime of moral turpitude because it includes intent to temporarily deprive another, and it does not require that a jury establishes whether there was an intent to permanently or temporarily deprive possession. <i>Castillo-Cruz v. Holder</i>, 581 F.3d 1154, 1161 (9th Cir. 2009); <i>Alvarez-Reynaga v. Holder</i>, 596 F.3d 534, 537 (9th Cir. 2010).</p> <p>California courts have upheld convictions under 496(a) for joyriding. <i>Alvarez-Reynaga</i>, 596 F.3d at 537.</p> <p><i>But see Matter of Diaz-Lizarraga</i>, 26 I&amp;N Dec. 847, 852-53 (BIA 2016) (broadening the theft offense definition of a crime of moral turpitude to no longer require an intent to permanently deprive); <i>Garcia-Martinez v. Sessions</i>, No. 16-72940, 2018 WL 1702839, at *2 (9th Cir. Apr. 9, 2018) (holding that <i>Diaz-Lizarraga</i> only applies prospectively to convictions on or after November 16, 2016). A theft offense is “a crime involving moral turpitude if it involves an intent to deprive the owner of his property either permanently or under circumstances where the owner’s property rights are substantially eroded.” <i>Diaz-Lizarraga</i>, 26 I&amp;N Dec. at 852-53; <i>Matter of Obeya</i>, 26 I&amp;N Dec. 856 (BIA 2016). A section 496(a) conviction committed after <i>Matter of Diaz-Lizarraga</i> still likely falls outside the</p>	

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			<p>generic definition of a crime of moral turpitude, because it includes circumstances where the owner's property rights are NOT substantially eroded.</p> <p>(b) (5) [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	
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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Vehicle Code § 10851(a) Theft and Unlawful Driving or Taking of a Vehicle</b>				
(a) Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in a county jail for not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code or by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.				
<b>Aggravated Felony: Theft Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(G) <b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)	County jail (max 1 year) or state prison (max 3 years)	(b) (5) [REDACTED]	<b>NO</b> <b>Categorical Match?</b> No, overbroad A violation of § 10851(a) is <u>categorically not a CIMT</u> because the least of the acts criminalized is a temporary taking, which is broader than the relevant generic offense. <i>Almanza-Arenas v. Lynch</i> , 815 F.3d 469, 482 (9th Cir. 2016); <i>Alvarez-Reynaga v. Holder</i> , 596 F.3d 534, 537 (9th Cir. 2010); <i>Castillo-Cruz v. Holder</i> , 581 F.3d 1154, 1160 (9th Cir. 2009).	

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	(b) (5)	<p>convictions committed after the decision, <i>see Garcia-Martinez v. Sessions</i>, No. 16-72940, 2018 WL 1702839, at *2 (9th Cir. Apr. 9, 2018)); <i>Matter of Obeya</i>, 26 I&amp;N Dec. 856 (BIA 2016). The least of the acts criminalized under section 10851(a) is a temporary taking, <i>see Almanza-Arenas v. Lynch</i>, 815 F.3d at 482, which still falls outside of the generic definition provided in <i>Matter of Diaz-Lizarraga</i>, 26 I&amp;N Dec. at 852–53. Consequently, the crime is likely still <u>overbroad</u>.</p> <p><b>Divisible?</b> No, indivisible The statute is indivisible because “[t]he means or methods of committing the element of the offense do not make the statute divisible, because the trier of fact does not need to agree as to whether the deprivation was temporary or permanent (the length of time during which the deprivation occurred).” <i>Almanza-Arenas v. Lynch</i>, 815 F.3d at 478.</p> <p>.</p>	
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Possible Charges of Removability	Maximum Sentence	Aggravated Felony?	Crime Involving Moral Turpitude?	Other
<b>Cal. Penal Code § 530.5(a), Identity Theft</b>				
Every person who willfully obtains personal identifying information, as defined in subdivision (b) of Section 530.55, of another person, and uses that information for any unlawful purpose, including to obtain, or attempt to obtain, credit, goods, services, real property, or medical information without the consent of that person, is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170.				
<b>Aggravated Felony: Theft Offense</b> 237(a)(2)(A)(iii)/ 101(a)(43)(G) <b>CIMT</b> 212(a)(2)(A)(i)(I) 237(a)(2)(A)(i)	County jail (max 1 year)	<b>Fraud Offense:</b> (b) (5)  (b) (5)	(b) (5)	

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# **THEFT & PROPERTY CRIMES CHART**

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## **GENERIC OFFENSES**

### **“THEFT OFFENSE”**

- The definition of the generic “theft offense” for the purposes of an aggravated felony under INA § 101(a)(43)(G) is “[1] a taking of property or an exercise of control over property [2] without consent [3] with the criminal intent to deprive the owner of rights and benefits of ownership, even if such deprivation is less than total or permanent.” *Carrillo-Jaime v. Holder*, 572 F.3d 747, 750 (9th Cir. 2009) (emphasis added).

### **“BURGLARY OFFENSE”**

- The definition of the generic “burglary offense” for the purposes of an aggravated felony under INA § 101(a)(43)(G) is the “unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime.” *Taylor v. U.S.*, 495 U.S. 575, 599 (1990) (emphasis added); *Ye v. INS*, 214 F.3d 1128, 1132 (9th Cir. 2000).

### **“CRIME OF VIOLENCE”**

- Under 18 U.S.C. § 16, a crime of violence is:

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) ~~any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.~~<sup>5</sup>

## **MAXIMUM SENTENCING**

CPC § 18.

“(a) Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony is punishable by imprisonment for 16 months, or two or three years in the state prison unless the offense is punishable pursuant to subdivision (h) of Section 1170.

(b) Every offense which is prescribed by any law of the state to be a felony punishable by imprisonment or by a fine, but without an alternate sentence to the county jail for a period not exceeding one year, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.”

### **BUT SEE CPC 18.5 amendment relevant to the application of CPC § 18(b):**

CPC § 18.5.

(a) Every offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to or not exceeding one year shall be punishable by imprisonment in a county jail for a period not to exceed 364 days. This section shall apply retroactively, whether or not the case was final as of January 1, 2015.

(b) A person who was sentenced to a term of one year in county jail prior to January 1, 2015, may submit an application before the trial court that entered the judgment of conviction in the case to have the term of the sentence modified to the maximum term specified in subdivision (a).

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<sup>5</sup> Because of the recent holding in *Sessions v. Dimaya*, No. 15-1498, ---S.Ct --- (2018), finding 18 U.S.C. § 16(b) to be unconstitutionally vague, subsection (b) is no longer valid to use in a crime of violence analysis for immigration purposes.

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